

# ALLEN & OVERY



## The von der Leyen Commission

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# The von der Leyen Commission

After a slightly inauspicious start, involving the rejection by the European Parliament of three candidate Commissioners and robust grilling by MEPs of many of the proposed team, the European Commission led by former German defence minister Ursula von der Leyen took office on 1 December 2019, a month later than initially intended. The 26 Commissioners (the UK elected not to nominate a member, given impending Brexit) will serve for a five-year term until 2024, with an ambitious agenda set against a challenging global economic and political outlook. Described by von der Leyen as a ‘geopolitical’ Commission, focused on ensuring that Europe plays a leading part in shaping a ‘better global order’, it is the first Commission led by a woman and, in another first, with 12 female Commissioners, almost achieves gender parity. As a further policy objective, von der Leyen is requiring all Commissioners to have a gender-balanced Cabinet and has stated that she is aiming for gender equality at all Commission management levels by the end of her mandate.

The new College of Commissioners has eight Vice-Presidents, of which three are Executive Vice-Presidents: Frans Timmermans (Netherlands), Margrethe Vestager (Denmark) and Valdis Dombrovskis (Latvia). These three, all of whom held office in the previous Commission, have supercharged portfolios, both chairing a Commissioners’ group on one of the Commission’s priority projects, and also managing a policy area and heading up the underlying Directorate-General(s).

Frans Timmermans, a Vice-President and Jean-Claude Juncker’s right-hand man in the previous Commission, has the task of coordinating work on the European Green Deal, the ambitious package of measures to enable Europe to become the first climate-neutral continent by 2050, and to increase the 2030 planned emissions reduction target from 40% to 50%. This is a huge brief, incorporating strategies extending to biodiversity, sustainable food, zero-pollution, investment, tax (including a carbon border tax) and external relations, and is likely to demand the reconciliation of various conflicting interests both within the Commission itself and between Member States. Timmermans will also chair the College of Commissioners in von der Leyen’s absence.

Margrethe Vestager, whose mandate as Competition Commissioner was, unusually, renewed, now has a very powerful role comprising not only the classic competition dossier but also co-ordinating Commission

policy across the whole digital economy, including big data, AI, cybersecurity, technological innovation and the taxation of digital companies. With this combination of powers, she is well equipped to take her erstwhile tough approach to new levels and is expected to continue to be an assured and high-profile force in the Commission and on the world stage. A particular challenge will be how to reconcile the inherent conflicts between industrial policy and competition enforcement objectives: criticism has already been levelled at her new dual role as both policy-setter and enforcer.

The third Executive Vice-President is Valdis Dombrovskis, formerly Vice-President and Commissioner for the Euro in the Juncker Commission. He now chairs the Commissioners’ group for an Economy that Works for People and also manages the financial services portfolio. As such, he is responsible for the fiscal and macroeconomic policies of Member States and for strengthening the European economy against economic shocks. His role will cover future developments of the Banking Union and Capital Markets Union to ensure financial stability, particularly important in the context of Brexit, and the creation of European green financing and fintech strategies. His mission letter requires him to work alongside Margrethe Vestager in the development of a long-term strategy for Europe’s industrial future.

*“...over the next five years, our Union will embark together on a transformation which will touch every part of our society and our economy.”*

Ursula von der Leyen’s speech in the European Parliament Plenary Session, 27 November 2019

## What can we expect during Commissioner Vestager's new mandate?

Commissioner Vestager's vigorous pursuit of tech giants is likely to continue unabated. She has been quoted as saying that if she knew at the beginning of her first mandate what she knows now she would have taken a more severe stance towards dominant tech companies and that digital policy over the next five years will be very different. Potential changes being advocated include the reversal of the burden of proof and/or a change in the standard of proof for dominant digital platforms accused of anti-competitive behaviour: suggestions made in the independent experts report on competition policy for the digital era commissioned by Vestager in her previous term. Rules to encourage data portability and to facilitate data access were also floated. A further issue considered by the report is the hotly-debated issue of 'killer acquisitions', a term used to refer to dominant firms acquiring small start-ups with quickly growing user bases that might otherwise have developed into important rivals. Vestager will certainly be following up on the report's recommendations and looking at the approaches being taken by other regulators. She has not, however, shown enthusiasm for the breaking-up of dominant tech platforms, as currently advocated by U.S. presidential candidate Senator Elizabeth Warren. On the other hand, a likely development is greater use, in suitable cases, of interim measures, following their imposition in the Broadcom case in October 2019 for the first time in nearly 20 years.

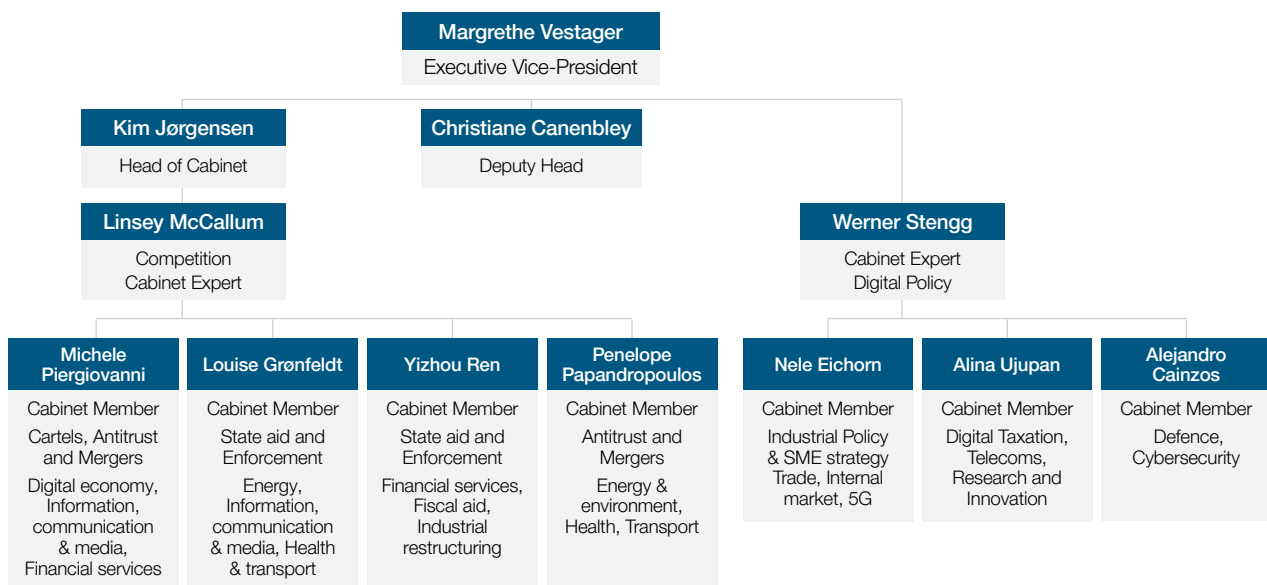
In her assessment as to whether enforcement or regulation or a dual approach is the most appropriate way forward, the Commissioner may use sector inquiries: President von der Leyen has specifically urged her to look at their use for new and emerging markets in order to get a full picture of what needs to be done. In any event, an increased focus on so-called 'surveillance capitalism' is inevitable, potentially leading to increased regulation around data collection, storage and usage. With her digital hat on, Commissioner Vestager is required to coordinate, in her first 100 days in office, a European approach on artificial intelligence. Reworking the digital taxation rules, at European level if international agreement is not possible by the end of 2020, is also an express part of her mandate.

On the competition front, we can expect enforcement generally to continue as a priority, with Vestager aiming for the improvement of case detection (initiatives that have been talked about include an information-sharing network of enforcers, police services and competition officials, and a dedicated market surveillance unit), the speeding up of investigations and improved cooperation with and between national competition authorities at both European and global levels. Other key initiatives will include ensuring that the overall Commission antitrust tool box is fit for purpose and fully adapted for a digital age, building on the findings in the independent experts report mentioned above. The Commissioner will be finalising the reviews of existing antitrust rules begun during her previous term in office: looking at vertical agreements and horizontal arrangements between competitors, and carrying out a "fitness check" on state aid rules.

The adequacy of the current EU merger control regime (both in relation to tech companies and more widely) will also continue to be scrutinised, amidst vocal calls for its radical reform. Certain Member States, particularly France and Germany, are putting pressure on the Commission to take greater account of global competition, especially involving foreign state-owned or state-funded firms. In December Vestager announced the Commission's review of its 1997 Market Definition Notice in light of major developments such as globalisation and digitisation. As it stands, the Notice gives rather formulaic guidance on defining product and geographic markets in merger and antitrust cases and is considered to be in need of updating. Vestager's mandate also requires her to devise an appropriate long-term European industrial strategy capable of tackling the 'distortive effects of foreign state ownership and subsidies in the internal market'.

A busy leader needs an effective second-in-command: her appointment of the highly-experienced and pragmatic Olivier Guersent as Director-General of DG Comp should stand her in good stead. In her Cabinet too, she has a strong team, many of whom, including Linsey McCallum, who will continue to focus on competition policy and enforcement, served in her previous term, now enhanced by the addition of digital experts.

## Commissioner Vestager's cabinet



*“Your task will be to ensure that Europe fully grasps the potential of the digital age and strengthens its industry and innovation capacity.”*

Mission letter to Margrethe Vestager

There are also five ‘regular’ vice-presidents. Josep Borrell (Spain) is charged with the priority project of A Stronger Europe in the World, and is also the High Representative for Foreign Affairs and Security Policy. He will play a key role in giving effect to von der Leyen’s aim for a geopolitical Commission, providing the College with a weekly foreign policy update and working closely with the other seven vice-presidents in relation to the external aspects of their work to ensure a more joined-up approach to internal and external policies. The remaining four are Věra Jourová (Czech Republic – Values and Transparency), Margaritis Schinas (Greece: his job title was changed from Protecting to Promoting our European Way of Life, in the wake of concerns from MEPs that the first iteration had far-right language connotations), Maroš Šefčovič (Slovakia – Interinstitutional Relations and Foresight) and Dubravka Šuica (Croatia – Democracy and Demography).

Of the other Commissioners, portfolios likely to be in the immediate spotlight in 2020 include Internal Market and Trade. France’s original nominee for Internal Market Commissioner Sylvie Goulard was rejected by MEPs over concerns of alleged misuse of public funds (for which she now faces formal charges in France – she has always strongly denied any wrongdoing). She has been replaced by Thierry Breton, a previous French Economy Minister who has spent the majority of his career in the private sector, most recently as CEO of IT multinational Atos. His vitally important role is to oversee the digital and internal market Directorate-Generals plus the newly-created defence and space DG. As such, his brief will include work on new technologies, including blockchain, algorithms, and 5G standards, and leading on the establishment of EU AI and cybersecurity strategies.

Breton will also play a part in mapping a new industrial strategy for the EU, in which potential changes to competition policy will be under discussion. Concerns have already been voiced in certain quarters that, in its bid to confront global competitors, European industrial policy may adopt a more protectionist bent. In this context, it will be interesting to see how Breton’s relationship with Margrethe Vestager develops: in contrast to her, he is known to have favoured a ‘European champions’ approach and supported the Siemens/Alstom merger which was blocked by the Commissioner during her previous mandate.

The Trade portfolio is in the hands of Phil Hogan (Ireland), formerly the Agriculture Commissioner. As Trade Commissioner he will be the EU chief negotiator on trade deals, including of course any future trading relationship between the EU and the UK. Brexit now seems (finally) likely to take place on 31 January, with a transition period due to last until the end of 2020, although widespread doubts have been voiced as to whether it will be possible to strike a deal before then. Brexit is certainly not the only critical issue likely to be pressing for

Hogan’s attention. The EU/Mercosur trade deal is another top priority for his mandate, as is reform of the WTO rules and extending and strengthening trade relationships with the U.S., China and Africa. He has also been tasked with ‘strengthening Europe’s ability to protect itself from unfair trade practices’, described as including a level playing field in procurement and implementing the new foreign direct investment screening mechanism.

Neighbourhood and Enlargement is another portfolio which is likely to excite interest in 2020, particularly given the opposing stances to potential accession by the Western Balkan countries taken by the Commission and certain Member States. Olivér Várhelyi (Hungary – formerly ambassador to the EU) now holds the portfolio, after the initial nominee László Trócsányi was blocked by the European Parliament on conflict of interest grounds (Romania’s nominee for Transport Commissioner Rovana Plumb met the same fate and was replaced by Adina Vălean).

In her allocation of portfolios, Ursula von der Leyen has been mindful of achieving not only gender but also geographic and political balance. Each of the three Executive Vice-Presidents comes from one of the main European party groupings: Renew Europe (Vestager), European People’s Party (Dombrovskis) and Socialists and Democrats (Timmermans). Three of the vice-presidents, and many of the Commissioners holding significant posts, come from Central and Eastern Europe, thus meeting the concerns of the Visegrad group countries that they risked being treated as second-tier Europeans.

Just over a month in, the new Commission is already facing testing times, as it works to fulfil its self-imposed undertaking to present policy and legislative proposals on key issues within 100 days of taking office. The flagship Green Deal is under threat, with Poland saying that it is not in a position to meet the carbon-neutral deadlines. The EU budget for 2021-2027, crucial to enable President von der Leyen to give effect to her ambitious plans, faces opposition from Member States keen to reduce spending. Divergent Member State views on issues such as NATO, enlargement, migration and the rule of law, rising tensions in the Middle East (now greatly increased following the recent action of the U.S. Administration against the Iranian General Qasem Soleimani on which European allies were not consulted in advance), Brexit and the U.S. elections in November are just a few of the challenges ahead.

In her speech to the European Parliament on 27 November 2019 when she received approval for her team, von der Leyen quoted Czech writer and former President Václav Havel: “Work for something because it is good, not just because it stands a chance to succeed.” That is a precept she may want to hold onto over the next five years.

## Olivier Guersent is new Director-General of DG Comp – first French appointee to the role

Olivier Guersent is the new Director-General (DG) of DG Comp, taking up his position as Margrethe Vestager's second term as Competition Commissioner gets underway. Guersent succeeds Cecilio Madero Villarejo who had been Acting DG since Johannes Laitenberger left to become a judge at the European Court of Justice in September 2019.

A French national, with longstanding experience of working at a senior level in DG Comp, Guersent served in the cabinet of Neelie Kroes during her term as Competition Commissioner from 2004 to 2010. He was then Head of Cabinet to Michael Barnier when he was Commissioner for the Internal Market (2010-2014). Since September 2018, Guersent has been DG of the Directorate General for Financial Stability and Financial Services (FISMA). He therefore comes to his new position with very solid experience of EU competition policy and enforcement, and of the administration of other major EU policy areas.

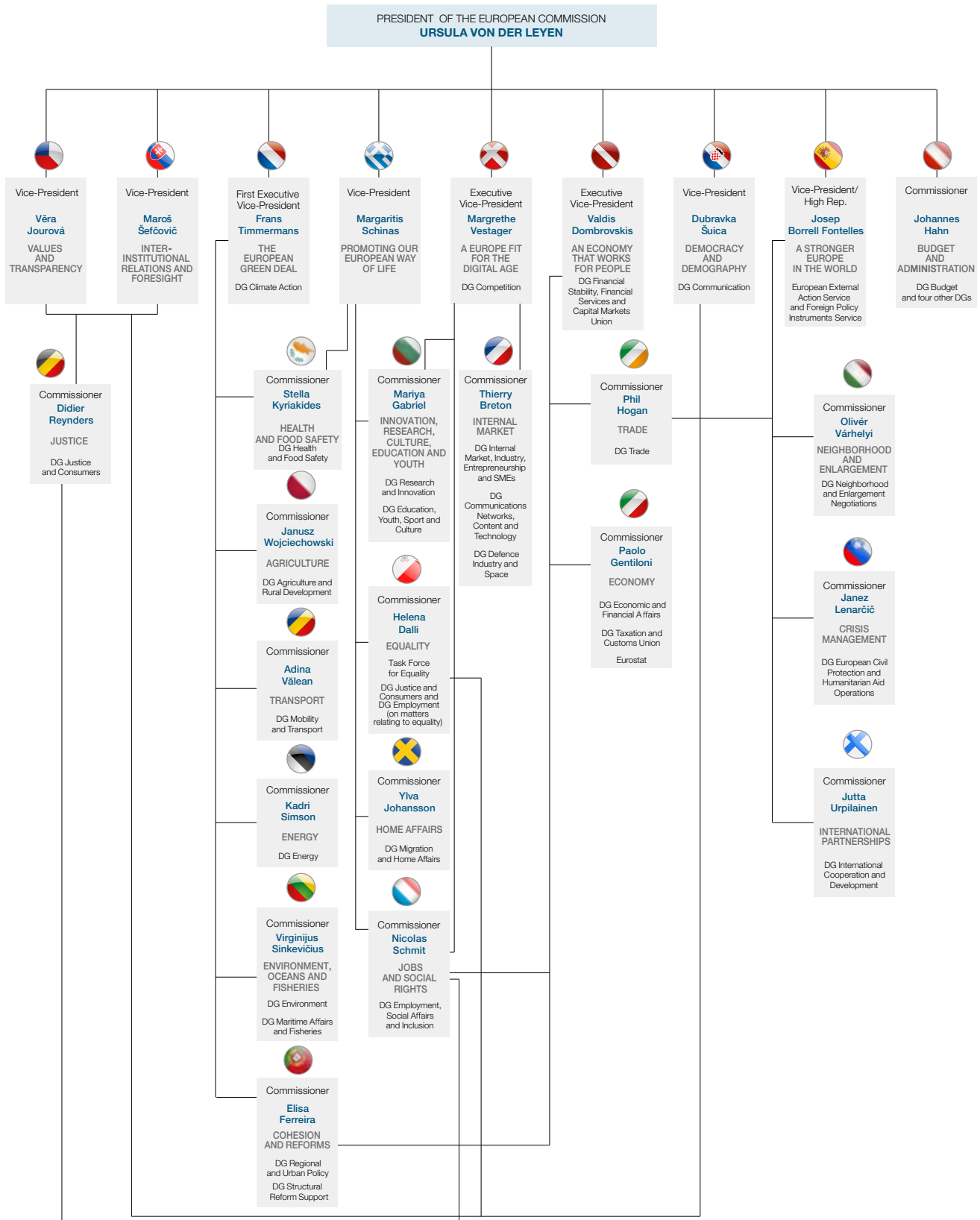
The post is vital in the administration of European competition enforcement. Crucial too is the relationship between the DG, as the professional head of the service, and the Commissioner, a political appointee. Previous DGs have not always enjoyed a good relationship with their Commissioner, although Laitenberger, Guersent's predecessor, is thought to have generally done so with Vestager. It remains to be seen how the dynamics between Guersent and Vestager will play out.

It is the first time that there has been a French DG of DG Comp.

German nationals consecutively held the post from 1968-2002 and it became regarded as a German fixture, until British Philip Lowe was appointed in 2002, followed by the Dutch Alexander Italianer from 2010-2015. A recurring German appointee for the role appeared logical at the beginning of the effective enforcement of EU competition law in the early 1980s, as Germany was then the only one of the six original Member States with a serious competition policy and agency.

Guersent becomes the first French DG at a time when the French and German Governments are calling for major reform of the EU merger control regime in the wake of the Siemens/Alstom prohibition decision in February 2019. His familiarity with competition law enforcement and how the Commission operates at a senior level means that he is unlikely to be influenced by political pressure from individual Member States, and he is predicted to take a measured and pragmatic approach in dealing with the reform demands of France and Germany. Expectations are that he will take a tough stance on competition enforcement which should fit well with Commissioner Vestager's own approach.

# The von der Leyen College of Commissioners



# Biographies of the key new Commissioners



**Josep Borrell Fontelles**

Spain

Vice-President, High Representative

*A Stronger Europe in the World*

Josep Borrell Fontelles, an engineer, was previously the Spanish Minister of Foreign Affairs, the EU and Cooperation. He was formerly involved in national and political affairs, holding positions in the Spanish government and parliament and he was also President of the European Parliament from 2004 to 2007.



**Thierry Breton**

France

*Internal Market*

Thierry Breton was CEO of IT multinational Atos from 2008 until his appointment. A computer science graduate, he was French Minister for Economy from 2005-2007 and has also significant industry experience, having formerly served as CEO for France Telecom (now Orange) and Thomson Multimedia.



**Valdis Dombrovskis**

Latvia

Executive Vice-President

*An Economy that Works for People*

A physics graduate, Valdis Dombrovskis was Finance Minister and subsequently Prime Minister of Latvia and a member of the Latvian Parliament before entering the European political world as an MEP. Since 2014, he has held several Commissioner portfolios including Euro, Financial Services and Capital Markets. Dombrovskis will likely be under pressure this term to push forward a new plan to finalise the banking union in Europe.



**Paolo Gentiloni**

Italy

*Economy*

Paolo Gentiloni is an Italian politician who was previously the President of the Democratic Party and was Italian Prime Minister from 2016 to 2018. As Italian Prime Minister, he promoted the implementation of several reforms including the advance healthcare directive and a new electoral law. His government also introduced stricter rules regarding immigration and social security, to counteract the European migration crisis.



**Phil Hogan**  
Ireland  
*Trade*

Phil Hogan, previously the Commissioner for Agriculture and Rural Development, was a Member of the Irish Parliament and Government where he was responsible for environmental policies. Mr Hogan will be the EU's chief trade negotiator if and when free-trade negotiations commence between the EU and the UK after Brexit.



**Věra Jourová**  
Czech Republic  
Vice-President  
*Values and Transparency*

Věra Jourová was previously Commissioner for Justice, Consumers and Gender Equality. Prior to being a Commissioner, she held several positions in the Czech government and worked in the private sector as a consultant.



**Didier Reynders**  
Belgium  
*Justice*

A law graduate, Didier Reynders, member of Belgium's French-speaking liberal party, was previously Belgian Minister of Foreign and European Affairs, and of Defence. He served as minister for finance from 1999-2011.



**Margaritis Schinas**  
Greece  
Vice-President  
*Promoting our European Way of Life*

Margaritis Schinas was Chief Spokesman of the European Commission from 2014. A member of the New Democracy Party (part of the European People's Party), he was an MEP from 2007 to 2009. As Commissioner for this new portfolio, his mission will include finding common ground on migration and focusing on the development of a European Security Union.





**Maroš Šefčovič**

Slovakia

Vice-President

*Interinstitutional Relations and Foresight*

Maroš Šefčovič was the European Commission Vice-President for the Energy Union and EU Space policy from 2014 until his new appointment, and has also previously served as Commissioner for Interinstitutional Relations (from 2010-2014). Before that he held a variety of positions in the Slovak Ministry of Foreign Affairs.



**Kadri Simson**

Estonia

*Energy*

Kadri Simson, a member of the Riigikogu, was previously chair of the Estonian Centre Party faction and Leader of the Estonian NATO Parliamentary Assembly Delegation. As Estonia's Minister of Economic Affairs and Infrastructure, she managed the areas of the Environment, Oceans and Fisheries in the Council of the EU.



**Virginijus Sinkevičius**

Lithuania

*Environment, Oceans and Fisheries*

Virginijus Sinkevičius is a member of the Lithuanian Farmers and Greens Union party and was minister of Economy and Innovation from 2017, entering politics in 2016. He studied in the Netherlands and the UK. He is the youngest Commissioner ever to take office.



**Dubravka Šuica**

Croatia

Vice-President

*Democracy and Demography*

Dubravka Šuica was an MEP and Head of the Croatian European People's Party delegation. A member of the centre-right Croatian Democratic Union (HDZ), she served two consecutive terms as mayor of Dubrovnik between 2001 and 2009. She is Croatia's first Vice-President since joining the EU in 2013.

*“In her allocation of the portfolios, Ursula von der Leyen has been mindful of achieving not only gender but also geographic and political balance.”*



**Frans Timmermans**  
Netherlands  
First Executive Vice-President  
*European Green Deal*

Before becoming First Vice-President of the European Commission in 2014, Frans Timmermans, from the Dutch Labour Party, held several key positions in the Dutch government as Minister of Foreign Affairs and European Affairs. He was the candidate of the Party of European Socialist for President of the Commission in the European election of May 2019.



**Adina Vălean**  
Romania  
*Transport*

Adina Vălean was an MEP for Romania's National Liberal Party (part of the European People's Party) from 2007 until her appointment as Commissioner. She was previously a member of the Romanian parliament and has also worked as a mathematics teacher in Bucharest.



**Margrethe Vestager**  
Denmark  
Executive Vice-President  
*A Europe Fit for the Digital Age*

Margrethe Vestager started her political career in Denmark serving as MP in the Danish Social Liberal Party and holding several ministerial positions including Minister for Economic Affairs and the Interior in 2011 before receiving the European Commission competition portfolio in 2014. During her last mandate as Competition Commissioner, Vestager spearheaded antitrust and state aid cases against the largest U.S. tech companies, leading to billions of euros in fines and spurring regulators across the globe to open their own inquiries.

# About Michael



Michael Reynolds

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Michael is a well-known name in the global legal profession and the world of competition law. A founding member of our antitrust team, he set up our Brussels office in 1979 and is an important figure in the international antitrust community. He has worked for a wide range of high-profile European, Asian, U.S. and Latin American clients. Michael has been a key figure in the International Bar Association (IBA) since 1979 and was President of the IBA for the term 2013-2014. Prior to becoming President, he held a number of senior positions, including that of Chair of the IBA's Antitrust and Trade Law Committee, and is now an Advisory Board member of that committee.

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